

Tanya E. Moore, SBN 206683
MOORE LAW FIRM, P.C.
300 South First Street, Ste. 342
San Jose, California 95113
Telephone (408) 298-2000
Facsimile (408) 298-6046
E-mail: service@moorelawfirm.com
tanya@moorelawfirm.com

Attorney for Plaintiff
Francisca Moralez

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

FRANCISCA MORALEZ,

Plaintiff,

vs.

DAVWEN, INC. dba BIG O TIRES #5006;
ROGER E. CASE, Trustee of the ROGER E.
and DIANE KATHELEEN 2021 TRUST,
dated November 16, 2021; DIANE
KATHELEEN CASE, Trustee of the ROGER
E. and DIANE KATHELEEN 2021 TRUST,
dated November 16, 2021;

Defendants.

) No.
)
) **COMPLAINT ASSERTING DENIAL OF**
) **RIGHT OF ACCESS UNDER THE**
) **AMERICANS WITH DISABILITIES ACT**
) **FOR INJUNCTIVE RELIEF,**
) **DECLARATORY RELIEF, DAMAGES,**
) **ATTORNEYS' FEES AND COSTS (ADA)**

I. SUMMARY

1. This is a civil rights action by plaintiff FRANCISCA MORALEZ ("Plaintiff") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

Big O Tires #5006
415 East 18th Street
Antioch, California 94509
(hereafter "the Facility")

1 10. Plaintiff lives less than five miles from the Facility and visited the Facility twice
2 on or about July 20, 2022 for a wheel alignment on one of her family vehicles (once to drop off
3 and once to pick up the vehicle), twice on or about September 13, 2022 for a wheel alignment
4 and repair on her van (again, once to drop off and once to pick up her van), and on or about
5 November 1, 2022 to have a tire repaired. During her visits to the Facility, Plaintiff personally
6 encountered barriers (both physical and intangible) that interfered with, if not outright denied,
7 Plaintiff's ability to use and enjoy the goods, services, privileges and accommodations offered
8 at the Facility. These barriers include, but are not necessarily limited to, the following:

9 a) On each visit, Plaintiff could not locate any van-accessible parking in
10 the Facility's parking lot. She parked in a parking space that was
11 designated as accessible with signage and pavement markings, but it
12 lacked an access aisle. The space next to her vehicle was excessively
13 sloped, which caused Plaintiff difficulty using her wheelchair ramp and
14 unloading from her van. Additionally, Plaintiff's wheelchair ramp
15 extended into the driveway where vehicles were coming out, making it
16 even more difficult for Plaintiff to unload.

17 b) On each visit, once out of her vehicle, Plaintiff could not find an
18 accessible path of travel to a Facility entrance. There was a set of stairs
19 and handrail in front of the designated accessible parking stall which
20 obstructed the path of travel from the passenger side of Plaintiff's
21 vehicle to the next closest building entrance, making it difficult for her
22 to wheel through, and the route was excessively sloped making it
23 difficult and painful for her to navigate.

24 c) On each visit, the threshold at the Facility entrance was too high, and the
25 floor adjacent to it was excessively sloped, making it difficult and
26 painful for Plaintiff to wheel through the doorway during both visits.

27 d) On July 20, 2022, when Plaintiff returned later in the day to pick up her
28 vehicle, the entrance door she had used earlier was obstructed by a

1 vehicle parked in the parking stall in front of it. Plaintiff then had to
2 travel even farther to yet another building entrance, which was difficult
3 as the route was long and excessively sloped.

4 e) On September 13, 2022, Plaintiff needed to use the restroom while at the
5 Facility. Although the restroom was open to customers, Plaintiff could
6 not use it because the doorway was too narrow for her wheelchair to fit
7 through. Further, Plaintiff could see inside the restroom and observed
8 that even if she could enter, the restroom was not accessible. For
9 example, Plaintiff could see that the restroom lacked sufficient clear
10 space inside which would prevent her from maneuvering her wheelchair,
11 there were no grab bars at the toilet which would prevent her from
12 transferring, and the lavatory lacked sufficient knee and toe clearances
13 to accommodate her wheelchair which would prevent her from reaching
14 the faucet.

15 f) On each visit, Plaintiff was unable to wait in the exterior waiting area
16 because there was no accessible route to it. It was located on a raised
17 curb, with no curb ramp affording access. On her earlier visits, Plaintiff
18 was able to drop off her vehicle and come back to pick it up later;
19 however, on November 1, 2022, Plaintiff had to wait while her tire was
20 repaired. She tried to wait in a safe location in the parking area but
21 vehicles kept pulling up close to her, which made her uncomfortable.
22 Additionally, the pavement surface in the area where she was waiting
23 was excessively sloped, so it was difficult and painful for Plaintiff to
24 maintain balance in her wheelchair while seated there.

25 g) On November 1, 2022, Plaintiff learned that the Facility offers a shuttle
26 service to customers, but the shuttle is not wheelchair-accessible.
27 Therefore, Plaintiff cannot use the shuttle service when dropping off or
28 picking up her vehicles and is forced to either wait or get a ride from

1 someone with a wheelchair-accessible vehicle.

2 11. There may exist other barriers at the Facility which relate to Plaintiff's
3 disabilities, and she will seek to amend this Complaint once such additional barriers are
4 identified as it is Plaintiff's intention to have all barriers which exist at the Facility and relate to
5 her disabilities removed to afford her full and equal access.

6 12. Plaintiff was, and continues to be, deterred from visiting the Facility because
7 Plaintiff knows that the Facility's goods, services, facilities, privileges, advantages, and
8 accommodations were and are unavailable to Plaintiff due to Plaintiff's physical disabilities.
9 Plaintiff enjoys the goods and services offered at the Facility, and will return to the Facility
10 once the barriers are removed.

11 13. Defendants knew, or should have known, that these elements and areas of the
12 Facility were inaccessible, violate state and federal law, and interfere with (or deny) access to
13 the physically disabled. Moreover, Defendants have the financial resources to remove these
14 barriers from the Facility (without much difficulty or expense), and make the Facility
15 accessible to the physically disabled. To date, however, Defendants refuse to either remove
16 those barriers or seek an unreasonable hardship exemption to excuse non-compliance.

17 14. At all relevant times, Defendants have possessed and enjoyed sufficient control
18 and authority to modify the Facility to remove impediments to wheelchair access and to
19 comply with the 1991 ADA Accessibility Guidelines and/or the 2010 ADA Standards for
20 Accessible Design. Defendants have not removed such impediments and have not modified the
21 Facility to conform to accessibility standards. Defendants have intentionally maintained the
22 Facility in its current condition and have intentionally refrained from altering the Facility so
23 that it complies with the accessibility standards.

24 15. Plaintiff further alleges that the (continued) presence of barriers at the Facility is
25 so obvious as to establish Defendants' discriminatory intent. On information and belief,
26 Plaintiff avers that evidence of this discriminatory intent includes Defendants' refusal to adhere
27 to relevant building standards; disregard for the building plans and permits issued for the
28 Facility; conscientious decision to maintain the architectural layout (as it currently exists) at the

Facility; decision not to remove barriers from the Facility; and allowance that Defendants' property continues to exist in its non-compliant state. Plaintiff further alleges, on information and belief, that the Facility is not in the midst of a remodel, and that the barriers present at the Facility are not isolated or temporary interruptions in access due to maintenance or repairs.

VI. FIRST CLAIM

Americans with Disabilities Act of 1990

Denial of "Full and Equal" Enjoyment and Use

16. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

17. Title III of the ADA holds as a "general rule" that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

18. Defendants discriminated against Plaintiff by denying Plaintiff "full and equal enjoyment" and use of the goods, services, facilities, privileges and accommodations of the Facility during each visit and each incident of deterrence.

Failure to Remove Architectural Barriers in an Existing Facility

19. The ADA specifically prohibits failing to remove architectural barriers, which are structural in nature, in existing facilities where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv).

20. When an entity can demonstrate that removal of a barrier is not readily achievable, a failure to make goods, services, facilities, or accommodations available through alternative methods is also specifically prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

21. Here, Plaintiff alleges that Defendants can easily remove the architectural barriers at the Facility without much difficulty or expense, that the cost of removing the architectural barriers does not exceed the benefits under the particular circumstances, and that Defendants violated the ADA by failing to remove those barriers, when it was readily

1 achievable to do so.

2 22. In the alternative, if it was not “readily achievable” for Defendants to remove
3 the Facility’s barriers, then Defendants violated the ADA by failing to make the required
4 services available through alternative methods, which are readily achievable.

5 Failure to Design and Construct an Accessible Facility

6 23. Plaintiff alleges on information and belief that the Facility was designed and
7 constructed (or both) after January 26, 1993 – independently triggering access requirements
8 under Title III of the ADA.

9 24. The ADA also prohibits designing and constructing facilities for first occupancy
10 after January 26, 1993, that aren’t readily accessible to, and usable by, individuals with
11 disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

12 25. Here, Defendants violated the ADA by designing and constructing (or both) the
13 Facility in a manner that was not readily accessible to the physically disabled public –
14 including Plaintiff – when it was structurally practical to do so.¹

15 Failure to Make an Altered Facility Accessible

16 26. Plaintiff alleges on information and belief that the Facility was modified after
17 January 26, 1993, independently triggering access requirements under the ADA.

18 27. The ADA also requires that facilities altered in a manner that affects (or could
19 affect) its usability must be made readily accessible to individuals with disabilities to the
20 maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility’s
21 primary function also requires making the paths of travel, bathrooms, telephones, and drinking
22 fountains serving that area accessible to the maximum extent feasible. Id.

23 28. Here, Defendants altered the Facility in a manner that violated the ADA and
24 was not readily accessible to the physically disabled public – including Plaintiff – to the
25 maximum extent feasible.

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¹ Nothing within this Complaint should be construed as an allegation that Plaintiff is bringing this action as a private attorney general under either state or federal statutes.

Failure to Modify Existing Policies and Procedures

29. The ADA also requires reasonable modifications in policies, practices, or procedures, when necessary to afford such goods, services, facilities, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

30. Here, Defendants violated the ADA by failing to make reasonable modifications in policies, practices, or procedures at the Facility, when these modifications were necessary to afford (and would not fundamentally alter the nature of) these goods, services, facilities, or accommodations.

Failure to Maintain Accessible Features

31. Defendants additionally violated the ADA by failing to maintain in operable working condition those features of the Facility that are required to be readily accessible to and usable by persons with disabilities.

32. Such failure by Defendants to maintain the Facility in an accessible condition was not an isolated or temporary interruption in service or access due to maintenance or repairs.

33. Plaintiff seeks all relief available under the ADA (i.e., injunctive relief, attorney fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.

VII. SECOND CLAIM

Unruh Act

34. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

35. California Civil Code § 51 states, in part, that: All persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

36. California Civil Code § 51.5 also states, in part that: No business establishment of any kind whatsoever shall discriminate against any person in this state because of the disability of the person.

1 37. California Civil Code § 51(f) specifically incorporates (by reference) an
2 individual's rights under the ADA into the Unruh Act.

3 38. Defendants' aforementioned acts and omissions denied the physically disabled
4 public – including Plaintiff – full and equal accommodations, advantages, facilities, privileges
5 and services in a business establishment (because of their physical disability).

6 39. These acts and omissions (including the ones that violate the ADA) denied,
7 aided or incited a denial, or discriminated against Plaintiff by violating the Unruh Act.

8 40. Plaintiff was damaged by Defendants' wrongful conduct, and seeks statutory
9 minimum damages of \$4,000 for each offense.

10 41. Plaintiff also seeks to enjoin Defendants from violating the Unruh Act (and
11 ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code
12 § 52(a).

13 **VIII. THIRD CLAIM**

14 **Denial of Full and Equal Access to Public Facilities**

15 42. Plaintiff re-pleads and incorporates by reference the allegations contained in
16 each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

17 43. Health and Safety Code § 19955(a) states, in part, that: California public
18 accommodations or facilities (built with private funds) shall adhere to the provisions of
19 Government Code § 4450.

20 44. Health and Safety Code § 19959 states, in part, that: Every existing (non-
21 exempt) public accommodation constructed prior to July 1, 1970, which is altered or
22 structurally repaired, is required to comply with this chapter.

23 45. Plaintiff alleges the Facility is a public accommodation constructed, altered, or
24 repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code
25 § 4450 (or both), and that the Facility was not exempt under Health and Safety Code § 19956.

26 46. Defendants' non-compliance with these requirements at the Facility aggrieved
27 (or potentially aggrieved) Plaintiff and other persons with physical disabilities. Accordingly,
28 Plaintiff seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Statutory minimum damages under section 52(a) of the California Civil Code according to proof.
3. Declaratory relief finding that Defendants violated the ADA.
4. Attorneys' fees, litigation expenses, and costs of suit.²
5. Interest at the legal rate from the date of the filing of this action.
6. For such other and further relief as the Court deems proper.

Dated: 11/4/2022

MOORE LAW FIRM, P.C.

/s/ Tanya E. Moore

Tanya E. Moore
Attorney for Plaintiff
Francisca Moralez

² This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

VERIFICATION

I, FRANCISCA MORALEZ, am the plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

Dated: 11/4/2022

/s/ Francisca Moralez
Francisca Moralez

I attest that the original signature of the person whose electronic signature is shown above is maintained by me, and that her concurrence in the filing of this document and attribution of her signature was obtained.

/s/ Tanya E. Moore
Tanya E. Moore
Attorney for Plaintiff,
FRANCISCA MORALEZ